

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

ARTHUR JOYAL BARKER §
VS. § CIVIL ACTION NO. 9:15cv64
J. NANCY MITCHELL, ET AL. §

**ORDER OVERRULING OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Plaintiff Arthur Joyal Barker, an inmate at the Powledge Unit, proceeding *pro se*, brought the above-styled lawsuit against J. Nancy Mitchell and Stephen Martin.

The court referred this matter to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends plaintiff's motion for default judgment be denied.

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such referral, along with the record and pleadings. Plaintiff filed objections to the Magistrate Judge's Report and Recommendation. This requires a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b).

Plaintiff objects to the Report, asserting the defendants are well beyond the deadlines set forth in the scheduling order. Further, plaintiff objects that Magistrate Judge has not ordered sanctions against the defendants. However, as the Magistrate Judge observed, the defendants have answered the complaint, and they have filed a motion to dismiss. The defendants' motion to dismiss had not been finally determined when plaintiff filed his motion. Further, while default judgment may be permitted as a sanction in certain circumstances, plaintiff has not shown that the defendants'

violation was willful or that lesser sanctions would not substantially achieve the desired deterrent effect. *See United States v. \$49,000*, 330 F.3d 371, 376 (5th Cir. 2003). After careful consideration, the court concludes plaintiff's objections are without merit.

O R D E R

Accordingly, plaintiff's objections are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct and the report of the Magistrate Judge is **ADOPTED**. It is therefore

ORDERED that plaintiff's motion for default judgment is **DENIED**.

So **ORDERED** and **SIGNED** this **20** day of **September, 2016**.



Ron Clark, United States District Judge